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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JOHN SONES, on behalf of himself, and on  
behalf of all persons similarly situated,

13 Plaintiffs

14

vs.

15 DOWNEY SAVINGS AND LOAN ASSN,  
16 F.A.; and Does 1 to 10,

#### Defendants.

CASE No.

CLASS AND COLLECTIVE ACTION  
COMPLAINT FOR:

1. FAILURE TO PAY COMPENSATION IN VIOLATION OF 29 U.S.C. § 201, *et seq.*;
  2. FAILURE TO PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, 515, 551, 552, 1182, 1194, 1197 AND 1198, *et seq.*;
  3. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;
  4. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
  5. FAILURE TO PROVIDE MEAL AND REST PERIODS IN VIOLATION OF CAL. LAB. CODE § 226.7 AND 512;
  6. FAILURE TO INDEMNIFY IN VIOLATION OF CAL. LAB. CODE § 2802; and,
  7. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *et seq.*

**DEMAND FOR A JURY TRIAL**

1 Plaintiff John Sones alleges on information and belief, except for his own acts and  
2 knowledge, the following:

3 **NATURE OF THE ACTION**

4 1. Plaintiff John Sones ("PLAINTIFF") brings this class action on behalf of  
5 himself and a California class consisting of all individuals who are or previously were employed by  
6 Defendant Downey Savings and Loan Assn, F.A. and/or Does 1 to 10, (hereinafter collectively  
7 referred to as "DEFENDANTS") as loan officers in California during the Class Period as hereinafter  
8 defined (the "CLASS").

9 2. Individuals in this position of loan officer with DEFENDANTS are and were  
10 employees entitled to be classified as non-exempt, entitled to be paid at least minimum wage,  
11 entitled to regular and overtime compensation, entitled to be provided with meal and rest breaks,  
12 entitled to reimbursement for out-of-pocket expenses spent in discharge of services for the  
13 employer's benefit, and entitled to prompt payment of all amounts due and unpaid owing upon  
14 leaving employment.

15 3. Although DEFENDANTS require their employees employed as loan officers to work  
16 more than eight (8) hours a day, more than forty (40) hours a week, and work hours on the seventh  
17 (7<sup>th</sup>) consecutive day of a work week, as a matter of policy and practice, DEFENDANTS  
18 consistently and uniformly failed to properly classify these employees, and through such practice,  
19 failed to record and pay such employees for hours worked, denying them the compensation that the  
20 law requires.

21 4. PLAINTIFF, on behalf of himself and the CLASS of loan officers similarly situated,  
22 seeks to have all such employees reclassified and recover all the compensation that DEFENDANTS  
23 were required by law to provide, but failed to provide, to PLAINTIFF and all other CLASS  
24 members, including but not limited to minimum wage for hours worked, regular and overtime  
25 compensation for hours worked, compensation for missed meal and rest breaks, reimbursement for  
26 out of pocket expenses, compensation for amounts not paid upon leaving employment and such  
27 other and further compensation, penalties, and interest as shall be determined.

## **JURISDICTION AND VENUE**

2       5.     This Court has jurisdiction over PLAINTIFF'S federal claim pursuant to 28  
3 U.S.C. §1331, federal question jurisdiction, 29 U.S.C. § 216, the Fair Labor Standards Act, and 28  
4 U.S.C. § 1367, supplemental jurisdiction of state law claims.

5       6.      Venue is proper in this district pursuant to 28 U.S.C. § 1391, because DOWNEY  
6 SAVINGS AND LOAN ASSN, F.A. (i) is subject to personal jurisdiction in this District, and,  
7 therefore, resides in this District and/or (ii) committed the wrongful conduct against certain  
8 members of the CLASS in San Diego County, California.

## PARTIES

11       7. Plaintiff John Sones was employed by DEFENDANTS from on or about November  
12 6, 2007 to February 5, 2008, in the state of California.

13        8. DEFENDANTS conducted and continue to conduct substantial and regular business  
14 in San Diego County, California, and throughout California. DEFENDANTS also conduct business  
15 throughout the United States and are an enterprise engaged in commerce within the meaning of the  
16 Fair Labor Standards Act by regularly and recurrently receiving or transmitting interstate  
17 communications.

18       9. The Defendants named in this Complaint, and Does 1 through 10, inclusive, are, and  
19 at all times mentioned herein were, the agents, servants, and/or employees of each of the other  
20 Defendant and each Defendant was acting within the course or scope of his, her or its authority as  
21 the agent, servant and/or employee of each of the other Defendant. Consequently, all the  
22 DEFENDANTS are jointly and severally liable to the PLAINTIFF and the other members of the  
23 CLASS, for the losses sustained as a proximate result of DEFENDANTS' conduct.

## COLLECTIVE ACTION UNDER THE FLSA

26       10. PLAINTIFF brings this lawsuit as a collective action under the Fair Labor and  
27 Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA”), on behalf of all persons who were, are, or will  
28 be employed by DEFENDANTS in California as loan officers or in other substantially similar

1 positions, at any time within the applicable statute of limitations period (the "COLLECTIVE  
2 CLASS PERIOD"), who have been misclassified as exempt from compensation for all hours  
3 worked (the "COLLECTIVE CLASS"). To the extent equitable tolling operates to toll claims by  
4 the COLLECTIVE CLASS against the DEFENDANTS, the COLLECTIVE CLASS PERIOD  
5 should be adjusted accordingly. The COLLECTIVE CLASS includes all such persons, whether or  
6 not they were paid by commission, by salary, or by part commission and part salary.

7 11. Questions of law and fact common to the COLLECTIVE CLASS as a whole, but not  
8 limited to the following, include:

- 9 a. Whether DEFENDANTS misclassified PLAINTIFF and members of the  
10 COLLECTIVE CLASS as exempt from receiving compensation for all hours  
11 worked, including federal minimum wage compensation and overtime compensation;
- 12 b. Whether DEFENDANTS failed to adequately compensate the members  
13 of the COLLECTIVE CLASS for all hours worked as required by the FLSA,  
14 including the time worked through their meal periods;
- 15 c. Whether DEFENDANTS should be enjoined from continuing the practices which  
16 violate the FLSA; and,
- 17 d. Whether DEFENDANTS are liable to the COLLECTIVE CLASS.

18 12. The first cause of action for the violations of the FLSA may be brought and  
19 maintained as an "opt-in" collective action pursuant to Section 16(b) of FLSA, 29 U.S.C. 216(b), for  
20 all claims asserted by the representative PLAINTIFF of the COLLECTIVE CLASS because the  
21 claims of the PLAINTIFF are similar to the claims of the members of the prospective  
22 COLLECTIVE CLASS.

23 13. PLAINTIFF John Sones and the COLLECTIVE CLASS are similarly situated,  
24 have substantially similar job requirements and pay provisions, and are subject to DEFENDANTS'  
25 common and uniform policy and practice of misclassifying their employees, failing to pay for all  
26 actual time worked and wages earned, and failing to accurately record all hours worked by these  
27 employees in violation of the FLSA and the Regulations implementing the Act as enacted by the  
28 Secretary of Labor (the "REGULATIONS").

## **CLASS ACTION ALLEGATIONS**

2       14. PLAINTIFF John Sones brings this action on behalf of himself in his individual  
3 capacity and also on behalf of a California Class of all employees of DEFENDANTS in California  
4 who were, are, or will be employed as loan officers or in other substantially similar positions, who  
5 were misclassified as exempt from receiving compensation for all hours worked during the period  
6 commencing on the date four years prior to the filing of this complaint and ending on the class  
7 period cutoff date (the “CALIFORNIA CLASS PERIOD”). This class is hereinafter referred to as  
8 the “CALIFORNIA CLASS.” The CALIFORNIA CLASS includes all such persons, whether or not  
9 they were paid by commission, by salary, or by part commission and part salary.

10        15. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in  
11 violation of the applicable California Labor Code (“Labor Code”) and Industrial Welfare  
12 Commission (“IWC”) Wage Order Requirements intentionally, knowingly, and systematically  
13 misclassified the PLAINTIFF and the other members of the CALIFORNIA CLASS as exempt from  
14 receiving compensation for all hours worked and other labor laws in order to avoid the payment of  
15 wages due for hours worked by misclassifying their positions as commissioned sales employees. To  
16 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against  
17 DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

18        16. DEFENDANTS violated the rights of the CALIFORNIA CLASS under California  
19 law by:

2001 (the “Wage Order”), California Code of Regulations § 11040(4), and the applicable California Minimum Wage Orders by failing to pay PLAINTIFF and the members of the CALIFORNIA CLASS at least the applicable minimum wage rate for each year of the CALIFORNIA CLASS PERIOD.

- (d) Violating the Wage Order and California Code of Regulations § 11040 by misclassifying PLAINTIFF and the members of the CALIFORNIA CLASS as exempt commissioned sales persons and failing to provide overtime compensation for all hours worked excess of eight (8) hours in a day, forty (40) in a week, or for hours worked on the seventh (7<sup>th</sup>) consecutive workday day.
  - (e) Violating Cal. Lab. Code § 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the PLAINTIFF and the members of the CALIFORNIA CLASS who have terminated their employment. Thus, DEFENDANTS are liable for such wages for a period of thirty (30) days following the termination of such employment.
  - (f) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA CLASS with an accurate itemized statement in writing showing the total hours worked by the employee.
  - (g) Violating the Wage Order and California Code of Regulations § 11040, subsection 7, by failing to maintain accurate records of time and hours worked in the payroll period and failing to make such information available to employees.
  - (h) Violating Cal. Lab. Code §§ 1198 and 226.7 and the regulations and orders implementing the Code, by failing to provide PLAINTIFF and the members

of the CALIFORNIA CLASS with meal periods and are thus liable for premium pay of one hour for each workday such meal periods were denied.

- (i) Violating Cal. Lab. Code § 2802 by failing to indemnify and reimburse PLAINTIFF, and all the members of the CALIFORNIA CLASS for all expenses incurred in direct consequence of the discharge of their duties

17. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Rule 23 of the Federal Rules of Civil Procedure (“F.R.C.P.”), in that:

- (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
  - (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS and will apply uniformly to every member of the CALIFORNIA CLASS;
  - (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all other members of the CALIFORNIA CLASS, was systematically misclassified as exempt from receiving compensation for all hours worked and sustained economic injuries arising from DEFENDANTS' violations of the laws of California. PLAINTIFF and the members of the CALIFORNIA CLASS are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by the DEFENDANTS of systematically misclassifying as exempt all loan officers from receiving compensation for all hours worked.
  - (d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class

1 certification inappropriate. Counsel for the CALIFORNIA CLASS will  
2 vigorously assert the claims of all Class Members.

3 18. In addition to meeting the statutory prerequisites to a Class Action, this action is  
4 properly maintained as a Class Action pursuant to F.R.C.P. 23, in that:

- 5 (a) Without class certification and determination of declaratory, injunctive,  
6 statutory and other legal questions within the class format, prosecution of  
7 separate actions by individual members of the CALIFORNIA CLASS will  
8 create the risk of:  
9     1) Inconsistent or varying adjudications with respect to individual  
10 members of the CALIFORNIA CLASS which would establish  
11 incompatible standards of conduct for the parties opposing the  
12 CALIFORNIA CLASS; or,  
13     2) Adjudication with respect to individual members of the  
14 CALIFORNIA CLASS which would as a practical matter be  
15 dispositive of interests of the other members not party to the  
16 adjudication or substantially impair or impede their ability to protect  
17 their interests.  
18 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds  
19 generally applicable to the CALIFORNIA CLASS, making appropriate class-  
20 wide relief with respect to the CALIFORNIA CLASS as a whole in that the  
21 DEFENDANTS systematically misclassified all loan officers as exempt from  
22 receiving compensation for all hours worked;  
23 (c) Common questions of law and fact exist as to the members of the  
24 CALIFORNIA CLASS and predominate over any question affecting only  
25 individual members, and a Class Action is superior to other available  
26 methods for the fair and efficient adjudication of the controversy, including  
27 consideration of:  
28     1) The interests of the members of the CALIFORNIA CLASS in

individually controlling the prosecution or defense of separate actions;

- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the CALIFORNIA CLASS;
  - 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;
  - 4) The difficulties likely to be encountered in the management of a Class Action; and,
  - 5) The basis of DEFENDANTS misclassifying PLAINTIFF and the CALIFORNIA CLASS as exempt from receiving overtime compensation.

12        19. This Court should permit this action to be maintained as a Class Action pursuant to  
13 F.R.C.P. 23 because:

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual members;
  - (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS;
  - (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
  - (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
  - (e) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;

- (f) There is a community of interest in ensuring that the combined assets and available insurance of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
  - (g) DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole; and
  - (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of the DEFENDANTS. The CALIFORNIA CLASS consists of all of DEFENDANTS' employees employed as loan officers in California who were classified as exempt from receiving wages for all hours worked. DEFENDANTS, as a matter of law, has the burden of proving the basis for the exemption as to each and every loan officer so classified. To the extent that DEFENDANTS have failed to maintain records sufficient to establish the basis for the exemption (including but not limited to, the employee's job duties, wages, and hours worked) for any loan officer, DEFENDANTS are estopped, as a matter of law, to assert the existence of the exemption.

## **GENERAL ALLEGATIONS**

21       20. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in  
22 violation of the applicable California Labor Code (“Labor Code”), Industrial Welfare Commission  
23 (“IWC”) Wage Order Requirements, and the applicable provisions of the FLSA, intentionally,  
24 knowingly, and wilfully, on the basis of job title alone and without regard to the actual overall  
25 requirements of the job or compensation paid, systematically misclassified the PLAINTIFF and the  
26 other members of the CALIFORNIA CLASS and the COLLECTIVE CLASS (the “CLASS”) as  
27 exempt from receiving wages for all hours worked. This practice of DEFENDANTS was intended  
28 to purposefully avoid the payment of earned wages by misclassifying the PLAINTIFF and other loan

1 officers similarly situated as exempt, commissioned sales people, regardless of whether wages  
 2 should have been paid and regardless of whether actual "commissions" were in fact paid to the  
 3 CLASS. To the extent equitable tolling operates to toll claims by the CLASS against  
 4 DEFENDANTS, the CALIFORNIA CLASS PERIOD and the COLLECTIVE CLASS PERIOD (the  
 5 "CLASS PERIODS") should be adjusted accordingly.

6       21. DEFENDANTS have intentionally and deliberately created numerous job levels and  
 7 a multitude of job titles to create the superficial appearance of hundreds of unique jobs, when in  
 8 fact, these jobs are substantially similar and can be easily grouped together for the purpose of  
 9 determining whether they are entitled to wages for hours worked and whether DEFENDANTS were  
 10 required to maintain accurate time and hour records. Indeed, one of DEFENDANTS' purposes in  
 11 creating and maintaining this multi-level job classification scheme is to create a roadblock to  
 12 discovery and class certification for all employees similarly misclassified as exempt.  
 13 DEFENDANTS have uniformly misclassified these CLASS members as exempt and denied them  
 14 wages and other benefits to which they are entitled in order to unfairly cheat the competition and  
 15 unlawfully profit.

16       22. DEFENDANTS maintain records from which the Court can ascertain and identify  
 17 each of DEFENDANTS' employees who as CLASS members, have been systematically,  
 18 intentionally and uniformly misclassified as exempt from receiving wages for all hours worked as a  
 19 matter of DEFENDANTS' corporate policy, practice and procedure. To the extent DEFENDANTS'  
 20 have assigned job titles other than "loan officer" to employees subjected to the practices herein  
 21 alleged, PLAINTIFF will seek leave to amend the complaint to include any additional job titles  
 22 when they have been identified.

23       23. DEFENDANTS have intentionally and deliberately created a variety of pay  
 24 structures to create the superficial appearance of unique payment plans, when in fact, these payment  
 25 plans were all effectuated and applied across the board to all employees at certain times during the  
 26 CLASS PERIOD. One of DEFENDANTS' purposes in creating and maintaining different payment  
 27 schemes throughout the CLASS PERIOD is to create a roadblock to discovery and class  
 28 certification for all employees similarly misclassified as exempt. PLAINTIFF and the other

1 members of the CLASS were all similarly subjected to each payment plan when such plans were put  
 2 in place by DEFENDANTS. These employees can be easily grouped together for the purpose of  
 3 analyzing whether each payment plan deprived the PLAINTIFF and members of the CLASS of  
 4 wages and rights to which these employees were entitled receive because DEFENDANTS uniformly  
 5 subjected PLAINTIFF and the CLASS members to each payment plan, for each period that each  
 6 plan was in effect, thereby denying PLAINTIFF and the members of the CLASS wages and rights to  
 7 which they are entitled, in order to unfairly cheat the competition and unlawfully profit.

8       24. DEFENDANTS maintain records from which the Court can ascertain and identify  
 9 each of DEFENDANTS' pay structures that systematically, intentionally and uniformly deprived  
 10 PLAINTIFF and the members of the CLASS from receiving wages for all hours worked as a matter  
 11 of DEFENDANTS' corporate policy, practice and procedure. PLAINTIFF will seek leave to  
 12 amend the complaint to detail these pay structures, whether such pay structures were comprised of  
 13 pay by commission, by salary, or by part commission and part salary.

14

### THE CONDUCT

15       25. PLAINTIFF John Sones was hired by DEFENDANTS and placed initially placed  
 16 into the job title of "loan officer," in one of DEFENDANTS' offices in the state of California. The  
 17 job title was described to the PLAINTIFF as a full-time position, wherein the performance of certain  
 18 duties would entitle PLAINTIFF to commissions. PLAINTIFF functioned as a working member on  
 19 the production side of the mortgage business for DEFENDANTS. The job duties of PLAINTIFF  
 20 and the other members of the CLASS are to deliver loan applications, market DEFENDANTS'  
 21 loans according to established procedures, prepare loan documentation and applications, write loans  
 22 according to DEFENDANTS guidelines, process DEFENDANTS' mailers, and make calls from  
 23 DEFENDANTS' offices. A mortgage loan is the product that DEFENDANTS deliver to the  
 24 customers. The PLAINTIFF and other members of the CLASS prepare loan documentation and  
 25 applications for submission based on rigidly defined parameters established by DEFENDANTS.  
 26 Effectively, the members of the CLASS act simply as clerks, delivering loan applications and  
 27 preparing the loan applications based upon DEFENDANTS' criteria so as to qualify the product as a

1 loan. In delivering and preparing loan applications, the members of the CLASS are endowed with  
2 no authority to change any of DEFENDANTS' product criteria. Like any clerk, the members of the  
3 CLASS can only follow the criteria established by the DEFENDANTS in a routine, automatic  
4 manner that is devoid of any independent judgment or discretion. In addition, as part of his  
5 employment with DEFENDANTS, PLAINTIFF was required to use his cell-phone and automobile  
6 to conduct business. DEFENDANTS, however, refused to reimburse PLAINTIFF for the cell-  
7 phone expense and automobile expense expended in direct consequence of the discharge of  
8 PLAINTIFF'S duties for DEFENDANTS.

9 26. In performing these routine tasks for DEFENDANTS at DEFENDANTS' offices, the  
10 members of the CLASS have worked and continue to work for DEFENDANTS without being paid  
11 the requisite minimum or overtime wages for all hours worked. As a result of these rigorous  
12 demands, PLAINTIFF and other similarly situated employees were also often unable to take  
13 uninterrupted meal and/or rest breaks due to the press of DEFENDANTS' business. During the  
14 Class Period, PLAINTIFF, and the members of the CLASS worked and/or still work on the  
15 production side of the DEFENDANTS' business, but are nevertheless misclassified as exempt.

16 27. Neither the PLAINTIFF, nor any member of the CLASS, was primarily engaged in  
17 work of a type that was or now is directly related to the DEFENDANTS' management policies or  
18 general business operations, when giving these words a fair but narrow construction. Neither the  
19 PLAINTIFF, nor any member of the CLASS was primarily engaged in work of a type that was or  
20 now is performed at the level of the policy or management of the DEFENDANTS. To the contrary,  
21 the work of DEFENDANTS' loan officers is work wherein PLAINTIFF and the members of the  
22 CLASS are primarily engaged in the day to day business operations of the DEFENDANTS, to  
23 mechanically deliver completed loan applications in accordance with the established criteria of the  
24 management policies and general business operations established by DEFENDANTS' management.  
25 In this way, the work of PLAINTIFF and the members of the CLASS is focused solely on the  
26 mechanical routine of obtaining and submitted the loan documentation pursuant to  
27 DEFENDANTS' established criteria. A loan officer's work in obtaining and preparing loan  
28 applications does not permit judgment or discretion that is independent, as this work is performed

1 according to DEFENDANTS' established criteria and procedures.

2       28. Considerations such as (a) DEFENDANTS' realistic expectations for the job titled  
 3 loan officer, on the production side of the DEFENDANTS' business enterprise, and (b) the actual  
 4 overall requirements of the job titled loan officer, are susceptible to common proof. The fact that  
 5 their work and those of other similarly situated employees involved, on occasion, a bonus or a draw  
 6 on commission does not mean that the PLAINTIFF and other members of the CLASS are exempt  
 7 from receiving minimum or overtime wages for all hours worked. The work that PLAINTIFF and  
 8 other members of the CLASS were and are primarily engaged in performing day to day activities is  
 9 the work that is required to be performed as part of the day to day business of DEFENDANTS of  
 10 obtaining and preparing loan applications. As a result, PLAINTIFF and the other members of the  
 11 CLASS were and still are primarily engaged in work that falls squarely on the production side of the  
 12 administrative/production worker dichotomy.

13       29. DEFENDANTS systematically misclassified as exempt PLAINTIFF and all other  
 14 members of the CALIFORNIA CLASS and COLLECTIVE CLASS solely on the basis of their job  
 15 title and without regard to DEFENDANTS' realistic expectations, the actual overall requirements of  
 16 the job, the hours worked or the pay received by the employee. Consequently, PLAINTIFF and the  
 17 other members of the CALIFORNIA CLASS and COLLECTIVE CLASS were uniformly and  
 18 systematically exempted by DEFENDANTS from payment of wages due for hours worked during  
 19 the CLASS PERIOD. DEFENDANTS also had a written company policy whereby DEFENDANTS  
 20 would reduce or eliminate an employee's earned compensation at the DEFENDANTS' discretion, in  
 21 violation of Cal. Labor Code § 221, Cal. Code of Regulations, Title 8, § 11040, and the applicable  
 22 Wage Order.

23       30. Cal. Lab. Code § 515 appoints the Industrial Welfare Commission to establish  
 24 exemptions from the requirement that an overtime rate of compensation be paid pursuant to  
 25 Sections 510 and 511 for executive, administrative, and professional employees, provided that the  
 26 employee is primarily engaged in the duties that meet the test of the exemption, customarily and  
 27 regularly exercises discretion and independent judgment in performing those duties, and earns a  
 28 monthly salary equivalent to no less than two times the state minimum wage for full-time

1 employment. California Labor Code § 515 and Industrial Welfare Commission Wage Order 4-2001  
2 (the "Wage Order") set forth the requirements which must be satisfied in order for an employee to  
3 be lawfully classified as exempt from certain provisions of the Wage Order. Although wrongfully  
4 classified by DEFENDANTS as exempt from certain requirements of the Wage Order at the time of  
5 hire and thereafter, PLAINTIFF, and all other members of the similarly-situated CALIFORNIA  
6 CLASS, are not exempt under Industrial Welfare Commission Wage Order 4-2001 (the "Wage  
7 Order"), and Cal. Lab. Code § 515.

8 31. Section 13 of the FLSA and 29 Code of Federal Regulations Part 541, *et seq.*, set  
9 forth the requirements which must be satisfied in order for an employee to be lawfully classified as  
10 exempt. Although wrongfully classified by DEFENDANTS as exempt at the time of hire and  
11 thereafter, PLAINTIFF, and all other members of the similarly-situated COLLECTIVE CLASS, are  
12 not exempt under section 13 of the FLSA or the provisions of 29 C.F.R. 541, *et seq.*.

13 32. Despite the fact that PLAINTIFF, and the other members of the CLASS, regularly  
14 worked in excess of eight (8) hours a day and/or forty (40) hours per week and/or on the seventh  
15 (7<sup>th</sup>) consecutive day of a work week, they did not receive minimum wages for the time worked nor  
16 overtime wages for the overtime hours worked, and as a result suffered an economic injury.

17 33. Pursuant to California Labor Code Section 1197, the payment of wages to  
18 employees less than the minimum wage established by the Industrial Welfare Commission is  
19 unlawful. DEFENDANTS have failed to pay PLAINTIFF and the other members of the  
20 CALIFORNIA CLASS wages at the amount established by the Minimum Wage Order, as set forth  
21 in Cal. Code of Regulations § 11000. The only employees to whom the applicability of the  
22 minimum wage order would not apply are employees who are exempt under the executive,  
23 administrative, or professional exemptions. As described above, the duties of PLAINTIFF and the  
24 other members of the CLASS do not qualify these employees for any of these exemptions. The only  
25 other employees who may be exempt from the minimum wage requirements are "outside sales  
26 persons." Neither PLAINTIFF nor any member of the CALIFORNIA CLASS were outside sales  
27 persons as defined by the Wage Order because more than half the working day was not spent away  
28 from the employer's place of business selling tangible or intangible items or obtaining orders or

1 contracts for products, services or use of facilities.

2 34. California Code of Regulations § 11040(3)(A) provides that:

3 The provisions of subsections (A), (B) and (C) [of the Wage Order] above shall not  
4 apply to any employee whose earnings exceed one and one-half (1 1/2) times the  
5 minimum wage if more than half of that employee's compensation represents  
6 commissions.

7 PLAINTIFF and the other members of the CLASS were not paid according to the structure above,  
8 and were, therefore, not exempt from the requirement that they be paid overtime. Further,  
9 employees who are paid pursuant to the pay structure outlined by Cal. Code of Regs. § 11040(3)  
10 would only be exempt from the provisions of subsections (A), (B) and (C), which govern the  
11 payment of overtime. Nothing in this limited exemption, however, relieves an employer from the  
12 obligations of :

- 13 (i) California Code of Regulations § 11040(4), which requires employers to pay at least  
14 minimum wage;
- 15 (ii) California Code of Regulations § 11040(7), which requires employers to provide  
16 accurate, itemized statements;
- 17 (iii) California Code of Regulations § 11040(11), which requires employers to provide  
18 meal periods to employees; or
- 19 (iv) California Code of Regulations § 11040(12), which requires employers to provide  
20 rest periods to employees.

21 35. Section 6 of the FLSA sets forth the requirement that employees engaged in  
22 commerce, such as PLAINTIFF and the other members of the COLLECTIVE CLASS, shall be paid  
23 at the applicable federally established rate of minimum wage. DEFENDANTS have violated  
24 section 6 of the FLSA by not paying PLAINTIFF and the other members of the COLLECTIVE  
25 CLASS at the rates established by section 6 of the FLSA.

26 36. Pursuant to 29 U.S.C. § 207, PLAINTIFF and other members of the COLLECTIVE  
27 CLASS, were required to be compensated for all meal breaks taken by PLAINTIFF and the other  
28 members of the COLLECTIVE CLASS where they performed duties predominantly for the benefit

1 of the DEFENDANTS during the meal breaks. Under 29 CFR 785.19, this time spent during the  
2 lunch break is compensable because PLAINTIFF and the other members of the COLLECTIVE  
3 CLASS were required to perform duties while eating.

4

5 **FIRST CAUSE OF ACTION**

6 **Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA")**

7 **(By PLAINTIFF and the COLLECTIVE CLASS and Against all DEFENDANTS)**

8 37. PLAINTIFF, and the other members of the COLLECTIVE CLASS,  
9 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 36  
10 of this Complaint.

11 38. DEFENDANTS are engaged in communication, business, and transmission  
12 throughout the United States and are, therefore, engaged in commerce within the meaning of 29  
13 U.S.C. § 203(b).

14 39. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful  
15 violations of the FLSA.

16 40. The Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, states that an employee must  
17 be compensated for all hours worked, including all straight time compensation and overtime  
18 compensation. 29 C.F.R. §778.223 and 29 C.F.R. §778.315. This Court has concurrent jurisdiction  
19 over claims involving the Fair Labor Standards Act pursuant to 29 U.S.C. § 216.

20 41. 29 U.S.C. § 206 provides that every employer shall pay to each of his  
21 employees who in any workweek is engaged in commerce or in the production of goods for  
22 commerce, or is employed in an enterprise engaged in commerce or in the production of goods for  
23 commerce, wages at the rate of \$5.15 per hour during the period of the COLLECTIVE CLASS  
24 PERIOD up to July 24, 2007, except that employees under twenty (20) years of wage must be paid  
25 at least \$4.25 per hour during their first 90 consecutive calendar days of employment with an  
26 employer. For the period from July 24, 2007 to twelve (12) months thereafter, the federal minimum  
27 rate for hourly wages was \$5.85 per hour. Beginning July 24, 2008, the federal minimum rate for  
28 hourly wages will be \$6.55 per hour, until July 24, 2009, when the rate will be \$7.25.

1       42. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does not  
2 apply to:

3                 any employee employed in a bona fide executive, administrative, or professional  
4 capacity (including any employee employed in the capacity of academic  
5 administrative personnel or teacher in elementary or secondary schools), or in the  
6 capacity of outside salesman (as such terms are defined and delimited from time to  
7 time by regulations of the Secretary, subject to the provisions of the Administrative  
8 Procedure Act [5 USCS §§ 551 *et seq.*] except [that] an employee of a retail or  
9 service establishment shall not be excluded from the definition of employee  
10 employed in a bona fide executive or administrative capacity because of the number  
11 of hours in his workweek which he devotes to activities not directly or closely related  
12 to the performance of executive or administrative activities, if less than 40 per  
13 centum of his hours worked in the workweek are devoted to such activities).

14       43. DEFENDANTS have willfully engaged in a widespread pattern and practice of  
15 violating the provisions of the FLSA, as detailed above, by uniformly designating certain employees  
16 as "exempt" employees, by their job title and without regard to DEFENDANTS' realistic  
17 expectations and actual overall requirements of the job, including PLAINTIFF and the other  
18 members of the COLLECTIVE CLASS who worked on the production side of the DEFENDANTS'  
19 business enterprise. This was done in an illegal attempt to avoid payment of minimum wages,  
20 overtime wages and other benefits in violation of the FLSA and Code of Federal Regulations  
21 requirements.

22       44. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, PLAINTIFF and  
23 the members of the COLLECTIVE CLASS are entitled to compensation for all hours actually  
24 worked, including time working during meal periods, compensation based on wages at a rate not  
25 less than the federal minimum wage describe above, and compensation at a rate not less than one  
26 and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in any  
27 workweek.

28       45. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the

1 exempt status of an employee. The exempt or nonexempt status of any particular employee must be  
 2 determined on the basis of whether the employee's salary and duties meet the requirements of the  
 3 regulations in this part.

4       46.     The exemptions of the FLSA as listed in section 13(a), and as explained  
 5 by 29 C.F.R. 541.3, do not apply to PLAINTIFF and the other members of the COLLECTIVE  
 6 CLASS, because their work consists of non-management, production line labor performed with  
 7 skills and knowledge acquired from on-the-job training, rather than from the prolonged course of  
 8 specialized intellectual instruction required for exempt learned professional employees such as  
 9 medical doctors, architects and archeologists. PLAINTIFF does not hold a bachelor's degree related  
 10 to finance, has not taken any prolonged course of specialization relating to finance, and has attained  
 11 the vast majority of the skills used as an employee of DEFENDANTS from on the job training.

12       47.     For an employee to be exempt as a bona fide "executive," all the  
 13 following criteria must be met and DEFENDANTS have the burden of proving that:

- 14           (a)    The employee's primary duty must be management of the enterprise, or of a  
                   customarily recognized department or subdivision;
- 15           (b)    The employee must customarily and regularly direct the work of at least two (2) or  
                   more other employees;
- 16           (c)    The employee must have the authority to hire and fire, or to command particularly  
                   serious attention to his or his recommendations on such actions affecting other  
                   employees; and,
- 17           (d)    The employee must be primarily engaged in duties which meet the test of exemption.

21       No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet the  
 22 requirements of being an "executive" under section 13 of the FLSA and 29 C.F.R. 541.100.

24       48.     For an employee to be exempt as a bona fide "administrator," all of the  
 25 following criteria must be met and DEFENDANTS have the burden of proving that:

- 26           (a)    The employee must perform office or non-manual work directly related to  
                   management or general business operation of the employer or the employer's  
                   customers;

- 1                             (b)     The employee must customarily and regularly exercise discretion and independent  
2                                 judgment with respect to matters of significance; and,
- 3                             (c)     The employee must regularly and directly assist a proprietor or an exempt  
4                                 administrator; or,
- 5                             (d)     The employee must perform under only general supervision, work requiring special  
6                                 training, experience, or knowledge; and,
- 7                             (e)     The employee must be primarily engaged in duties which meet the test of exemption.

8     No member of the COLLECTIVE CLASS was or is an administrator because they all fail to meet  
9     the requirements for being an "administrator" under section 13(a) of the FLSA and 29 C.F.R.  
10    541.202. PLAINTIFF and the other members of the COLLECTIVE CLASS perform their primary,  
11    day to day duties without the requisite amount of discretion and independent judgment needed to  
12    qualify for the administrative exemption.

13                  49. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other  
14     members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work week and  
15     were also required to perform duties that were primarily for the benefit of the employer during meal  
16     periods.

17                  50. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members  
18     of the COLLECTIVE CLASS, minimum wages for all hours worked and overtime compensation for  
19     the hours they have worked in excess of the maximum hours permissible by law as required by  
20     section 7 of the FLSA, even though PLAINTIFF and the other members of the COLLECTIVE  
21     CLASS; were regularly required to work, and did in fact work, both regular overtime hours.

22                  51. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members  
23     of the COLLECTIVE CLASS, regular compensation for the hours they have worked, performing  
24     duties primarily for the benefit of the employer during meal periods.

25                  52. For purposes of the Fair Labor Standards Act, the employment practices of  
26     DEFENDANTS were and are uniform throughout California in all respects material to the claims  
27     asserted in this Complaint.

28                  53. There are no other exemptions applicable to PLAINTIFF and/or to members of the

## 1 || COLLECTIVE CLASS.

2       54. As a result of DEFENDANTS' failure to pay minimum wages and overtime  
3 compensation for hours worked, as required by the FLSA, PLAINTIFF and the members of the  
4 COLLECTIVE CLASS were damaged in an amount to be proved at trial.

5       PLAINTIFF, therefore, demands that he and the members of the COLLECTIVE  
6 CLASS be paid minimum wages as required by the FLSA for every hour worked in any work week  
7 for which they were not compensated, overtime compensation as required by the FLSA for every  
8 hour of overtime worked in any work week for which they were not compensated, straight wages for  
9 every hour worked primarily for the benefit of DEFENDANTS during meal breaks for which they  
10 were not compensated, plus interest and attorneys' fees as provided by law.

## **SECOND CAUSE OF ACTION**

## **For Failure To Pay Earned Wages and Overtime Compensation**

[Cal. Lab. Code §§ 204, 210, 218, 510, 1194, 1197 and 1198]

(By PLAINTIFF and the CALIFORNIA CLASS and Against all Defendants)

56. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
17 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 55 of this  
18 Complaint.

57. Cal. Lab. Code § 204 requires employers to pay employees for all hours worked as  
20 follows: "all wages... ...earned by any person in any employment are due and payable twice during  
21 each calendar month, on days designated in advance by the employer as the regular paydays." Cal.  
22 Lab. Code § 510 further provides that employees in California shall not be employed more than  
23 eight (8) hours in any workday or forty (40) hours in a workweek or on a seventh (7<sup>th</sup>) consecutive  
24 workday of a workweek unless they receive additional compensation beyond their regular wages in  
25 amounts specified by law.

27       58.     Cal. Lab. Code § 551 states that, “Every person employed in any occupation of labor  
is entitled to one day’s rest therefrom in seven.”

59. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees to

1 work more than six days in seven."

2 60. Cal. Lab. Code § 1194 states:

3 Notwithstanding any agreement to work for a lesser wage, any employee receiving  
4 less than the legal minimum wage or the legal overtime compensation applicable to  
5 the employee is entitled to recover in a civil action the unpaid balance of the full  
6 amount of this minimum wage or overtime compensation, including interest thereon,  
7 reasonable attorney's fees, and costs of suit.

8 61. Cal. Lab. Code § 1197 states the requirement that a minimum wage be paid and  
9 provides:

10 The minimum wage for employees fixed by the commission is the minimum wage to  
11 be paid to employees, and the payment of a less wage than the minimum so fixed is  
12 unlawful.

13 62. Cal. Lab. Code § 1198 provides:

14 The maximum hours of work and the standard conditions of labor fixed by the  
15 commission shall be the maximum hours of work and the standard conditions of  
16 labor for employees. The employment of any employee for longer hours than those  
17 fixed by the order or under conditions of labor prohibited by the order is unlawful.

18 63. DEFENDANTS have intentionally and uniformly designated certain employees as  
19 "exempt" from receiving wages for all hours worked and from receiving certain other rights, by  
20 their job title and without regard to DEFENDANTS' realistic expectations, the requirements of the  
21 job, and the method of payment made by DEFENDANTS, including PLAINTIFF and the other  
22 members of the CALIFORNIA CLASS who worked on the production side of the DEFENDANTS'  
23 business enterprise. This was done in an illegal attempt to avoid payment of regular and overtime  
24 wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare Commission  
25 requirements.

26 64. Only employees whose primary job duties meet the test of exemption as a(n)  
27 "executive," "administrator," "professional," or as an "outside salesperson" may be exempt from  
28 the provisions of the Wage Order that require the payment of minimum wage and overtime. The

1 primary job duties of the PLAINTIFF and the members of the CALIFORNIA CLASS would not  
2 qualify these employees to meet either of these exemptions.

3 65. For an employee to be exempt as a bona fide "executive," all the following criteria  
4 must be met and DEFENDANTS have the burden of proving that:

- 5 (a) The employee's primary duty must be management of the enterprise, or of a  
6 customarily recognized department or subdivision; and,
- 7 (b) The employee must customarily and regularly direct the work of at least two (2) or  
8 more other employees; and,
- 9 (c) The employee must have the authority to hire and fire, or to command particularly  
10 serious attention to his or his recommendations on such actions affecting other  
11 employees; and,
- 12 (d) The employee must customarily and regularly exercise discretion and independent  
13 judgment; and,
- 14 (e) The employee must be primarily engaged in duties which meet the test of exemption.

15 No member of the CALIFORNIA CLASS was or is an executive because they all fail to meet the  
16 requirements of being an "executive" within the meaning of Order No. 4-2001.

17 66. For an employee to be exempt as a bona fide "administrator," all of the following  
18 criteria must be met and DEFENDANTS have the burden of proving that:

- 19 (a) The employee must perform office or non-manual work directly related to  
20 management policies or general business operation of the employer; and,
- 21 (b) The employee must customarily and regularly exercise discretion and independent  
22 judgment; and,
- 23 (c) The employee must regularly and directly assist a proprietor or an exempt  
24 administrator; or,
- 25 (d) The employee must perform, under only general supervision, work requiring special  
26 training, experience, or knowledge, or,
- 27 (e) The employee must execute special assignments and tasks under only general  
28 supervision; and,

(f) The employee must be primarily engaged in duties which meet the test of exemption.

2 No member of the CALIFORNIA CLASS was or is an administrator because they all fail to meet  
3 the requirements for being an “administrator” under Order No. 4-2001.

4       67. The Industrial Welfare Commission, ICW Wage Order 4-2001 also sets forth the  
5 requirements which must be complied with to place an employee in the “professional” exempt  
6 category. For an employee to be exempt as a bona fide professional, all the following criteria must  
7 be met:

(a) The employee must primarily perform work that is intellectual or creative and that requires the exercise of discretion and independent judgment.

(b) The employee must be licensed or certified by the state of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching or accounting.

14 No member of the CALIFORNIA CLASS was or is an administrator because they all fail to meet  
15 the requirements for being an “professional” under Order No. 4-2001.

16 68. PLAINTIFF, and other members of the CALIFORNIA CLASS, do not fit the  
17 definition of an exempt executive, administrative, or professional employee because:

- (a) Less than fifty percent (50%) of their work hours are spent on managerial or administrative (exempt) duties;
- (b) More than fifty percent (50%) of their work hours are spent performing non exempt duties, including but not limited to answering telephones, filling out pre-printed forms and following strict and exacting procedures;
- (c) They do not have the discretion or independent judgment, in that they must follow exacting and comprehensive company-wide policies and procedures which dictate

(d) They do not have the authority to hire and/or fire other personnel; and

(e) PLAINTIFF and the other members of the CALIFORNIA CLASS did not earn a monthly salary equivalent to two (2) times the state minimum wage for full-time

1 employment.

2 69. PLAINTIFF, and other members of the CALIFORNIA CLASS, are not outside  
3 salespersons within the meaning of the Wage Order because they did not and do not customarily and  
4 regularly work more than half their working time away from the employer's place of business  
5 selling tangible or intangible items or obtaining orders or contracts for products, services or use of  
6 facilities.

7 70. PLAINTIFF, and other members of the CALIFORNIA CLASS, are not qualified  
8 for exemption from overtime by virtue of receipt of payment of commissions, under subsection (D)  
9 of Section 3 of the Wage Order, because the earnings of PLAINTIFF and the other members of the  
10 CLASS did not exceed one and one-half (1 ½) times the minimum wage and/or less than half the  
11 employee's compensation represents "commissions."

12 71. During the class period, the PLAINTIFF, and other members of the CALIFORNIA  
13 CLASS, worked more than eight (8) hours in a workday and/or forty (40) hours in a work week  
14 and/or on the seventh (7<sup>th</sup>) consecutive day of a workweek.

15 72. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members  
16 of the CALIFORNIA CLASS, at least minimum wage for all hours they have worked and overtime  
17 compensation for the hours they worked in excess of the maximum hours permissible by law as  
18 required by Cal. Lab. Code §§ 510 and 1198, *et seq.* and the Wage Order, even though PLAINTIFF,  
19 and the other members of the CALIFORNIA CLASS, were regularly worked regular hours at  
20 DEFENDANTS' offices, and did in fact work overtime hours for DEFENDANTS.

21 73. By virtue of DEFENDANTS' unlawful failure to pay additional  
22 compensation to the PLAINTIFF, and the other members of the CALIFORNIA CLASS, for their  
23 regular and overtime hours, the PLAINTIFF, and the other members of the CALIFORNIA CLASS,  
24 have suffered, and will continue to suffer, an economic injury in amounts which are presently  
25 unknown to them and which will be ascertained according to proof at trial.

26 74. DEFENDANTS knew or should have known that PLAINTIFF, and the other  
27 members of the CALIFORNIA CLASS, were misclassified as exempt from wages and  
28 DEFENDANTS systematically elected, either through intentional malfeasance or gross nonfeasance,

1 not to pay them for their labor as a matter of uniform corporate policy, practice and procedure.

2 There is no basis for DEFENDANTS' failure to pay minimum wages to loan officers.

3       75. Therefore, PLAINTIFF, and the other members of the CALIFORNIA CLASS,  
4 request recovery of regular and overtime compensation according to proof, interest, attorney's fees  
5 and cost pursuant to Cal. Lab. Code § 218.5 and § 1194(a), as well as the assessment of any  
6 statutory penalties against DEFENDANTS, in a sum as provided by the Cal. Lab. Code and/or other  
7 statutes. Further, PLAINTIFF, and the other members of the CALIFORNIA CLASS, are entitled to  
8 seek and recover reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§ 218.5 and 1194.

9       76. In performing the acts and practices herein alleged in violation of labor laws and  
10 refusing to provide the requisite regular and overtime compensation, the DEFENDANTS acted and  
11 continue to act intentionally, oppressively, and maliciously toward the PLAINTIFF, and toward the  
12 other members of the CALIFORNIA CLASS, with a conscious and utter disregard of their legal  
13 rights, or the consequences to them, and with the despicable intent of depriving them of their  
14 property and legal rights and otherwise causing them injury in order to increase corporate profits at  
15 the expense of PLAINTIFF and the members of the Class.

## **THIRD CAUSE OF ACTION**

## **For Failure to Pay Wages When Due**

| Cal. Lab. Code § 203 |

20 (By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

21 77. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
22 incorporate by reference, as though fully set forth herein, paragraphs 1 through 76 of this Complaint.

23 || 78. Cal. Lab. Code § 200 provides that:

24 As used in this article:

25 (a) "Wages" includes all amounts for labor performed by employees of every  
26 description, whether the amount is fixed or ascertained by the standard of time, task,  
27 piece, commission basis, or other method of calculation.

28 (b) "Labor" includes labor, work, or service whether rendered or performed under

1 contract, subcontract, partnership, station plan, or other agreement if the labor to be  
2 paid for is performed personally by the person demanding payment.

3 79. Cal. Lab. Code § 202 provides, in relevant part, that:

4 If an employee not having a written contract for a definite period quits his or her  
5 employment, his or her wages shall become due and payable not later than 72 hours  
6 thereafter, unless the employee has given 72 hours previous notice of his or her  
7 intention to quit, in which case the employee is entitled to his or her wages at the  
8 time of quitting. Notwithstanding any other provision of law, an employee who quits  
9 without providing a 72-hour notice shall be entitled to receive payment by mail if he  
10 or she so requests and designates a mailing address. The date of the mailing shall  
11 constitute the date of payment for purposes of the requirement to provide payment  
12 within 72 hours of the notice of quitting.

13 80. Cal. Lab. Code § 203 provides:

14 If an employer willfully fails to pay, without abatement or reduction, in accordance  
15 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is  
16 discharged or who quits, the wages of the employee shall continue as a penalty from  
17 the due date thereof at the same rate until paid or until an action therefor is  
18 commenced; but the wages shall not continue for more than 30 days.

19 81. Many of the CALIFORNIA CLASS members, including the PLAINTIFF, have  
20 terminated their employment and DEFENDANTS have not tendered payment of wages owed.

21 82. Therefore, as provided by Cal lab. Code § 203, on behalf of himself and the members  
22 of the CALIFORNIA CLASS, PLAINTIFF demands thirty days of pay as penalty for not paying all  
23 wages due at time of termination for all employees who terminated employment during the  
24 CALIFORNIA CLASS PERIOD and demand an accounting and payment of all wages due, plus  
25 interest, as provided by Cal lab. Code § 218.6 plus attorneys fees and interest as allowed by law.

26

27

28

1  
2                   **FOURTH CAUSE OF ACTION**

3                   **For Failure to Provide Accurate Itemized Statements**

4                   **[Cal. Lab. Code § 226]**

5                   **(By PLAINTIFF and the CALIFORNIA CLASS and against All DEFENDANTS)**

6         83.        PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
7 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 82 of this  
8 Complaint.

9         84.        Cal. Labor Code § 226 provides that an employer must furnish employees with an  
10 "accurate itemized statement in writing showing:

- 11                   (1) gross wages earned,  
12                   (2) total hours worked by the employee, except for any employee whose compensation is  
13                   solely based on a salary and who is exempt from payment of overtime under subdivision (a)  
14                   of Section 515 or any applicable order of the Industrial Welfare Commission,  
15                   (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid  
16                   on a piece-rate basis,  
17                   (4) all deductions, provided that all deductions made on written orders of the employee may  
18                   be aggregated and shown as one item,  
19                   (5) net wages earned,  
20                   (6) the inclusive dates of the period for which the employee is paid,  
21                   (7) the name of the employee and his or her social security number, except that by January 1,  
22                   2008, only the last four digits of his or her social security number or an employee  
23                   identification number other than a social security number may be shown on the itemized  
24                   statement,  
25                   (8) the name and address of the legal entity that is the employer, and  
26                   (9) all applicable hourly rates in effect during the pay period and the corresponding number  
27                   of hours worked at each hourly rate by the employee."

28         85.        At all times relevant herein, DEFENDANTS violated Labor Code § 226,

1 in that DEFENDANTS failed to properly and accurately itemize the number of hours worked by  
2 PLAINTIFF, and the other members of the CALIFORNIA CLASS at the effective regular rates of  
3 pay and the effective overtime rates of pay.

4       86. Both the Wage Order at Section 7 and California Code of Regulations § 11040(7)  
5 further require that every employer to do the following:

6           Every employer shall keep accurate information with respect to each employee  
7 including the following:

8           (1) Full name, home address, occupation and social security number.

9           (2) Birth date, if under 18 years, and designation as a minor.

10          (3) Time records showing when the employee begins and ends each work period. Meal  
11 periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods  
12 during which operations cease and authorized rest periods need not be recorded.

13          (4) Total wages paid each payroll period, including value of board, lodging, or other  
14 compensation actually furnished to the employee.

15          (5) Total hours worked in the payroll period and applicable rates of pay. This information  
16 shall be made readily available to the employee upon reasonable request.

17          (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the  
18 incentive plan formula shall be provided to employees. An accurate production record shall  
19 be maintained by the employer.

20        87. At all times relevant herein, DEFENDANTS violated Section 7 of the Wage Order  
21 and California Code of Regulations § 11040(7) in that DEFENDANTS failed to properly and  
22 accurately maintain information of the PLAINTIFF and other members of the CALIFORNIA  
23 CLASS, consisting of time records showing when the employee begins and ends each work period  
24 and the total hours worked in the payroll period with applicable rates of pay. Further,  
25 DEFENDANTS failed to make such information available to employees.

26        88. DEFENDANTS knowingly and intentionally failed to comply with Labor Code §§  
27 226, Section 7 of the Wage Order, and California Code of Regulations § 11040(7), causing  
28 economic injury to PLAINTIFF, and the other members of the CALIFORNIA CLASS. These

1 damages include, but are not limited to, costs expended calculating the true hours worked and the  
 2 amount of employment taxes which were not properly paid to state and federal tax authorities.  
 3 These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members of the  
 4 CLASS are entitled to recover liquidated damages of \$50.00 for the initial pay period in which the  
 5 violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code  
 6 § 226, in an amount according to proof at the time of trial (but in no event more than \$4,000.00 for  
 7 PLAINTIFF and each respective member of the CALIFORNIA CLASS herein) plus reasonable  
 8 attorney's fees and costs pursuant to Labor Code § 226(g).

9

10 **FIFTH CAUSE OF ACTION**

11 **For Failure to Provide Meal and/or Rest Periods**

12 **[Cal. Lab. Code §§ 226.7 and 512]**

13 **(By PLAINTIFF and the CALIFORNIA CLASS and against All DEFENDANTS)**

14 89. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
 15 incorporate by reference, as though fully set forth herein, paragraphs 1 through 88 of this Complaint.

16 90. Cal. Lab. Code § 512 provide, in relevant part: "An employer may not employ an  
 17 employee for a work period of more than five hours per day without providing the employee with a  
 18 meal period of not less than 30 minutes, except that if the total work period per day of the employee  
 19 is no more than six hours, the meal period may be waived by mutual consent of both the employer  
 20 and employee. An employer may not employ an employee for a work period of more than 10 hours  
 21 per day without providing the employee with a second meal period of not less than 30 minutes,  
 22 except that if the total hours worked is no more than 12 hours, the second meal period may be  
 23 waived by mutual consent of the employer and the employee only if the first meal period was not  
 24 waived."

25 91. Section 11 of the Order 4-2001 of the Industrial Wage Commission (the "Wage  
 26 Order") provides, in relevant part:

27 Meal Periods:

28 (A) No employer shall employ any person for a work period of more than five (5)

1                  hours without a meal period of not less than 30 minutes, except that when a  
2                  work period of not more than six (6) hours will complete the day's work the  
3                  meal period may be waived by mutual consent of the employer and the  
4                  employee. Unless the employee is relieved of all duty during a 30 minute  
5                  meal period, the meal period shall be considered an "on duty" meal period  
6                  and counted as time worked. An "on duty" meal period shall be permitted  
7                  only when the nature of the work prevents an employee from being relieved  
8                  of all duty and when by written agreement between the parties an on-the-job  
9                  paid meal period is agreed to. The written agreement shall state that the  
10                 employee may, in writing, revoke the agreement at any time.

11                 (B) If an employer fails to provide an employee a meal period in accordance with  
12                 the applicable provisions of this order, the employer shall pay the employee  
13                 one (1) hour of pay at the employee's regular rate of compensation for each  
14                 workday that the meal period is not provided.

15                 92. Section 12 of the Order 4-2001 of the Industrial Wage Commission (the "Wage  
16                 Order") provides, in relevant part:

17                 Rest Periods:

18                 (A) Every employer shall authorize and permit all employees to take rest periods,  
19                 which insofar as practicable shall be in the middle of each work period. The  
20                 authorized rest period time shall be based on the total hours worked daily at  
21                 the rate of ten (10) minutes net rest time per four (4) hours or major fraction  
22                 thereof. However, a rest period need not be authorized for employees whose  
23                 total daily work time is less than three and one-half (3 1/2) hours. Authorized  
24                 rest period time shall be counted as hours worked for which there shall be no  
25                 deduction from wages.

26                 93. Cal. Lab. Code § 226.7 provides:

27                 (a) No employer shall require any employee to work during any meal or rest period  
28                 mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

5 DEFENDANTS have intentionally and improperly failed to provide all rest and/or  
6 meal periods without any work or duties to PLAINTIFF and the other members of the  
7 CALIFORNIA CLASS who worked more than three and one half hours (3 ½) per day, and by  
8 failing to do so DEFENDANTS violated the provisions of Labor Code 226.7.

9        95. Therefore, PLAINTIFF demands on behalf of himself and the members of the  
10 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not  
11 provided for each four (4) hours of work during the period commencing on the date that is within  
12 four years prior to the filing of this Complaint and one (1) hour of pay for each five (5) hours of  
13 work in which a meal period was not provided.

## **SIXTH CAUSE OF ACTION**

## **For Failure to Indemnify**

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

19       96. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
20 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 95 of this  
21 Complaint.

22 || 97. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

28 98. At all relevant times herein, DEFENDANTS have violated Cal. Lab. Code § 2802,

1 by failing to indemnify and reimburse PLAINTIFF, and all the members of the CALIFORNIA  
2 CLASS for all expenditures or losses incurred in direct consequence of the discharge of  
3 PLAINTIFF'S duties. In particular, DEFENDANTS required PLAINTIFF and the other members  
4 of the CALIFORNIA CLASS to utilize a cell-phone and their automobile in order to perform and  
5 fully discharge the duties imposed by DEFENDANTS. Subscription to a cell-phone provider and  
6 the use of an automobile by PLAINTIFF and the members of the CALIFORNIA CLASS were  
7 necessary to meet with realtors, attend meetings and make necessary telephones calls. Although the  
8 cell-phone subscription and the use of the automobile were necessary expenditures incurred by  
9 PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify  
10 and reimburse as an employer is required to do under the laws and regulations of California

11       99. Thus, PLAINTIFF and the members of the CALIFORNIA CLASS were forced to  
12 contribute to the expenses of the DEFENDANTS' business, which expenses must be refunded by  
13 DEFENDANTS to each member of the CALIFORNIA CLASS.

14        100. Cal. Lab. Code § 2802(b) and (c) provide for interest at the statutory post judgment  
15 rate of 10% simple interest per annum from the date of the expenditure plus attorneys' fees to  
16 collect reimbursement.

17       101. PLAINTIFF, therefore, demands reimbursement for expenditures or losses incurred  
18 by him and the members of the CALIFORNIA CLASS in direct consequence of the discharge of  
19 their duties, or their obedience to the directions of the DEFENDANTS with interest at the statutory  
20 rate and attorneys' fees.

## **SEVENTH CAUSE OF ACTION**

## **For Unlawful Business Practices**

[Cal. Bus. And Prof. Code § 17200 *et seq.*]

**(By PLAINTIFF and the CALIFORNIA CLASS and against All DEFENDANTS)**

26 102. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
27 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 101 of this  
28 Complaint.

1       103. DEFENDANTS are "persons" as that term is defined under California Business &  
2 Professions Code § 17021.

3       104. California Business & Professions Code § 17200 defines unfair competition as any  
4 unlawful, unfair, or fraudulent business act or practice.

5       105. By the conduct alleged hereinabove in the First through Sixth Claims for Relief,  
6 DEFENDANTS have violated the provisions of the Unfair Competition Law, Cal. Bus. & Prof.  
7 Code §§ 17200, et seq., for which this Court should issue equitable and injunctive relief, pursuant to  
8 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld or labor taken  
9 without proper compensation.

10      106. By and through the unfair and unlawful business practices described hereinabove,  
11 DEFENDANTS have obtained valuable property, money, and services from the PLAINTIFF, and  
12 the other members of the CLASS, and has deprived them of valuable rights and benefits guaranteed  
13 by law, all to their detriment and to the benefit of DEFENDANTS so as to allow DEFENDANTS to  
14 unfairly compete.

15      107. All the acts described herein as violations of, among other things, the Cal. Lab. Code,  
16 California Code of Regulations, and the Industrial Welfare Commission Wage Orders, are unlawful  
17 and in violation of public policy, are immoral, unethical, oppressive, and unscrupulous, and thereby  
18 constitute unfair and unlawful business practices in violation of Cal. Bus. And Prof. Code § 17200  
19 *et seq.*

20      108. PLAINTIFF, and the other members of the CALIFORNIA CLASS, are further  
21 entitled to, and do, seek a declaration that the above described business practices are unfair and  
22 unlawful and that an injunctive relief should be issued restraining DEFENDANTS from engaging in  
23 any of these unfair and unlawful business practices in the future.

24      109. PLAINTIFF, and the other members of the CALIFORNIA CLASS, have no plain,  
25 speedy, and/or adequate remedy at law that will end the unfair and unlawful business practices of  
26 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a  
27 result of the unfair and unlawful business practices described above, PLAINTIFF, and the other  
28 members of the CALIFORNIA CLASS, have suffered and will continue to suffer irreparable harm

1 unless DEFENDANTS are restrained from continuing to engage in these unfair and unlawful  
2 business practices. In addition, DEFENDANTS should be required to disgorge the unpaid moneys  
3 to PLAINTIFF, and the other members of the CALIFORNIA CLASS.

4

5

### PRAYER

6 WHEREFOR, PLAINTIFF prays for judgment against each Defendant, jointly and severally,  
7 as follows:

- 8       A) Compensatory damages, according to proof at trial due PLAINTIFF and the other  
9              members of the COLLECTIVE CLASS and CALIFORNIA CLASS, during the  
10             applicable COLLECTIVE CLASS PERIOD and CALIFORNIA CLASS PERIOD  
11             plus interest thereon at the statutory rate;
- 12       B) Restitution, according to proof at trial, due PLAINTIFF and the other members of the  
13              CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus  
14             interest thereon at the statutory rate;
- 15       C) One (1) hour of pay for each workday in which a meal period was not provided to  
16              PLAINTIFF and each member of the CALIFORNIA CLASS for each four (4) hours  
17             of work during the period commencing on the date that is within four years prior to  
18             the filing of this Complaint;
- 19       D) An order temporarily, preliminarily and permanently enjoining and restraining  
20              DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 21       E) An order requiring DEFENDANTS to provide an accounting of all hours worked, all  
22              wages, and all sums unlawfully withheld from compensation due to PLAINTIFF and  
23             the other members of the COLLECTIVE and CALIFORNIA CLASSES;
- 24       F) Imposition of a constructive trust upon the assets of the DEFENDANTS to the extent  
25              of the sums due to PLAINTIFF and to the other members of the COLLECTIVE and  
26             CALIFORNIA CLASSES;
- 27       G) An award of interest, including prejudgment interest at the legal rate;
- 28       H) An award of statutory damages, including reasonable attorneys' fees and cost of suit;

- 1 I) An award of penalties as available under the law; and,
- 2 J) Such other and further relief as the Court deems just and proper.

3  
4 Dated: May 21 2008

BLUMENTHAL & NORDREHAUG

5 By:  
6

  
7 Norman B. Blumenthal  
Attorneys for Plaintiff

8  
9 UNITED EMPLOYEES LAW GROUP  
10 Walter Haines, Esq.  
11 65 Pine Ave, #312  
12 Long Beach, CA 90802  
13 Telephone: (562) 256-1047  
14 Facsimile: (562) 256-1006

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2                   **DEMAND FOR JURY TRIAL**  
3

4  
5 Plaintiff demands a jury trial on issues triable to a jury.  
6

7 Dated: May 21, 2008  
8

9                   **BLUMENTHAL & NORDREHALIG**  
10

11                   By   
12                   Norman B. Blumenthal  
13                   Attorneys for Plaintiff  
14

15                   UNITED EMPLOYEES LAW GROUP  
16                   Walter Haines, Esq.  
17                   65 Pine Ave, #312  
18                   Long Beach, CA 90802  
19                   Telephone: (562) 256-1047  
20                   Facsimile: (562) 256-1006  
21

22                   G:\D\NBB\Sones v. Downey\p-complaint-FINAL.wpd  
23

## CIVIL COVER SHEET

ORIGINAL

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

JOHN SONES, on behalf of himself, and on behalf of all persons similarly situated, Plaintiffs,

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

BLUMENTHAL & NORDREHAUG, 2255 Calle Clara, La Jolla,  
California 92037, 858.551.1223

**DEFENDANTS**

DOWNEY SAVINGS AND LOAN ASSN., F.A.; and Does 1 to 10, Defendants

**08 MAY 28 PM 4:37**

County of Residence of First Listed Defendant

CLERK (U.S. PLAINTIFF CASES ONLY)

SOUTHERN DISTRICT OF CALIFORNIA

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE

LAND INVOLVED.

Attorneys (If Known)

'08 CV U 945 J RBB DEPUTY

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4
<input type="checkbox"/>	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 5
<input type="checkbox"/>	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/>	<input type="checkbox"/> 6

Incorporated or Principal Place of Business In This State

Incorporated and Principal Place of Business In Another State

Foreign Nation

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Other	<input type="checkbox"/> 863 DIWC/DIW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7

Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): **FLSA, 29 U.S.C. 201**

Brief description of cause:

Unpaid wages and overtime

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

5/27/08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

151330

AMOUNT

\$350-

APPLYING IIP

JUDGE

MAG. JUDGE

RB 05/28/08

**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

# 151330 - MB  
\* \* C O P Y \* \*  
May 28, 2008  
16:33:44

**Civ Fil Non-Pris**  
USAO #: 08CV0945  
Judge.: NAPOLEON A JONES, JR  
Amount.: \$350.00 CK  
Check#: BC11399

**Total-> \$350.00**

FROM: JOHN SONES VS  
DOWNNEY SAVINGS & LOAN